



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR ERP FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 8, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 7, 2018 (the "10 Day Notice");
- an order requiring the Landlord to make emergency repairs for health or safety reasons;
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf. The Landlord attended the hearing and was assisted by his son-in-law, K.S. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that Landlord was served with the Application package by registered mail on June 8, 2018. K.S. acknowledged receipt on behalf the Landlord. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*.

The Landlord submitted documentary evidence in response to the Application to the Residential Tenancy Branch. However, K.S. confirmed the evidence was not served on the Tenant. As the Tenant was not served with the Landlord's documentary evidence in accordance with the Rules of Procedure, the evidence is excluded and has not been considered further in this Decision.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. In this case, I find it appropriate to exercise my discretion to dismiss the Tenant's request for an order that the Landlord make emergency repairs for health or safety reasons, with leave to reapply.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 10 Day Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The tenancy agreement between the parties was not reduced to writing. However, the parties confirmed the tenancy began in June 2010, and that rent is currently due in the amount of \$1,350.00 per month. On behalf of the Landlord, K.S. testified rent is due on the first day of each month. The Tenant disagreed, noting cheques have routinely been accepted at a later date. The parties agreed the Tenant did not pay a security deposit.

On behalf of the Landlord, K.S. testified that rent was not paid when due. Accordingly, the Landlord issued the 10 Day Notice, which was received by the Tenant on June 7, 2018. According to the K.S., rent in the amount of \$10,050.00 was outstanding at that time. Outstanding rent dated back to 2013. However, K.S testified that payments have been made since the 10 Day Notice was issued and that \$7,350.00 is currently outstanding.

The Tenant disputed that rent is outstanding as claimed. He testified that he has provided a series of post-dated rent cheques to the Landlord.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. Section 46 of the *Act* permits a landlord to take steps to end a tenancy if rent remains unpaid on any day after the day it is due.

After careful consideration of the parties' evidence and submissions, I find there is insufficient evidence before me to confirm the date rent is due, or that any rent remains outstanding. Indeed, the amount of rent alleged to be outstanding is related to missed rent payments in 2013, 2014 and 2015, which the Tenant denied are outstanding.

In light of the above, I order that the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application. I order that the Tenant may deduct \$100.00 from a future rent payment in satisfaction of the filing fee.

Conclusion

I order that the 10 Day Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant remains at liberty to reapply for an order for repairs at a later date, in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 30, 2018

Residential Tenancy Branch